

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

AUTHENTICOM, INC.,

Plaintiff,

v.

CDK GLOBAL, LLC, and THE REYNOLDS
AND REYNOLDS COMPANY,

Defendants.

THE REYNOLDS AND REYNOLDS
COMPANY,

Counterclaim Plaintiff,

v.

AUTHENTICOM, INC.,

Counterclaim Defendant.

No. 3:17-CV-318-JDP

**DEFENDANT THE REYNOLDS AND REYNOLDS COMPANY’S
MOTION TO DISMISS
PLAINTIFF AUTHENTICOM, INC.’S ORIGINAL COMPLAINT**

Defendant The Reynolds and Reynolds Company (“Reynolds”), by its undersigned counsel and pursuant to Federal Rule of Civil Procedure 12(b)(6), hereby moves to dismiss the Original Complaint filed by Authenticom, Inc. (“Authenticom”) [Dkt. 1].

For the reasons set forth in the accompanying Memorandum in Support, Reynolds submits that Authenticom has failed to plead a plausible set of facts and claims upon which relief can be granted. Those reasons include the following:

First, Authenticom’s actions, contracts, and requested relief are all illegal because they hinge upon Authenticom accessing Reynolds’ proprietary Dealer Management System without

Reynolds' authorization. Multiple statutes outlaw this behavior, including the Federal Computer Fraud and Abuse Act, the Wisconsin Computer Crimes Act, and the California Comprehensive Computer Data Access and Fraud Act. As a necessary consequence of that illegality, all of Authenticom's claims fail.

Second, Authenticom's antitrust theories suffer from additional deficiencies. It alleges that Reynolds and its co-defendant CDK entered into a horizontal, anticompetitive, *per se* illegal conspiracy. But the agreement in question is not horizontal, not anticompetitive, and not part of a recognized *per se* category. Authenticom's broader conspiracy allegations are not plausible under its own pleaded facts, nor do they generally allege the type of conspiracy that would be *per se* illegal anyway.

Authenticom's other antitrust theories also fail for a variety of reasons, including: (a) the Supreme Court's holding that even monopolists have no duty to deal with or assist rivals, except in rare circumstances not present here; (b) Reynolds' mere 30% market share; (c) the legitimacy of Reynolds' efforts to prevent others from accessing its system without permission; and (d) the fact that Reynolds' contracts with dealers solely prevent Authenticom and other unauthorized third parties from directly accessing Reynolds' DMS systems. Additional reasons and details are set forth in the Memorandum.

Each of Authenticom's claims should therefore be dismissed. Moreover, as explained in the Memorandum, as a consequence of the fundamental illegality of Authenticom's unauthorized accessing of Reynolds proprietary Dealer Management Systems, the defects in Authenticom's claims cannot be cured. For that reason, and the others set forth in the Memorandum, the dismissal should be with prejudice.

In addition to the Memorandum, this motion is accompanied by the Declaration of Brice Wilkinson and associated exhibits, which are appropriate for the Court to consider for the reasons set forth in the Memorandum.

Accordingly, Reynolds moves that Authenticom's Original Complaint be dismissed with prejudice, any injunctive relief in Authenticom's favor be vacated, and the Court grant such other relief as may be appropriate.

DATED: July 21, 2017

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Respectfully submitted,

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